

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

CURRENT

SUBJECT: DEVELOPMENT AGREEMENTS
POLICY NO.: 600-37
EFFECTIVE DATE: June 6, 1989

BACKGROUND:

Municipal Code chapter 10, article 5, division 1, sections 105.0101-105.0111 governing the procedure for and adoption of development agreements, was adopted by the City Council by ordinance No. 15836 N.S. on November 24, 1982, pursuant to the authority granted by California Government Code, section 65865 (a) (g).

The intent of the Development Agreement legislation was to remove the uncertainty in the development approval process. The legislation provides for a contractual process with applicants to assure development proceeding under existing policies, rules and regulations with the concomitant right to the public to utilize the mechanism for adding supplementary regulations to existing ordinances or development standards for particular projects.

The other important purpose of the legislation was to facilitate orderly and planned growth and achieve growth management goals and objectives, including assurances of adequate public facilities at the time of development. Proper timing and sequencing of development, effective capital improvements programming, encouragement of plan implementation, conservation of resources, encouragement of investment, maintaining lower prices, strengthening the public planning process by encouraging private participation in comprehensive planning, and providing more flexible and streamlined development procedures are also purposes of this legislation. (Gov. Code Sec. 65864; San Diego Municipal Code Sec. 105.0101-B.)

ISSUES:

The original function of the development agreement process was to make available to the City the ability to obtain fees and capital improvements from development in community plan areas within the planned urbanizing tiers pending the judicial approval of the Facility Benefit Assessment program. The vesting of rights under such agreements, however, has raised a host of issues as to the wisdom of granting unrestricted and perpetual vesting of rights in exchange for financial commitments which, for the most part, can be obtained through existing city regulations, policies and ordinances. Moreover, the revision of the General Plan and Progress Guide, the adoption of the Interim Development Ordinance and the need to retain maximum flexibility in the City to be able to adopt and implement growth limitation, growth accommodation or growth management development approaches, including the timing and planning of development, and future flexibility to adjust facility benefit assessments, facility financing plans and fee structures has led to serious reevaluation of the appropriateness of an unrestricted policy of entering into development agreements. At the same time, the City Council wishes to conserve public and private resources which may be utilized in costly negotiations, study and financial commitment of resources by utilizing an advance review of the appropriateness of approving a development agreement for specific projects. The Council also wishes to expand the types of supplemental project financing which would be eligible for development agreement approval to projects reflecting a broader range of transit, open space, environmental, social and cultural needs.

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

CURRENT

PURPOSE:

To address and clarify the current issues concerning development agreements and to provide guidelines to (1) establish where and under what circumstances development agreements would be appropriate; (2) ensure that The City of San Diego will derive supplemental benefits from these agreements in proportion to the degree of vesting authorized and in excess of what can be obtained under existing policies, rules and regulations; (3) broaden the categories of projects eligible for development agreement approval to include transit, open space, environmental educational, social and cultural needs; and (4) to provide City staff and/or the applicant an opportunity for an advance review of the feasibility of entering into a development agreement by the City Council.

INCLUSION:

In order to minimize the potential for legal challenges, the standards contained in any adopted development agreement policy should:

1. Be consistent with the Progress Guide and General Plan, relevant City ordinances and policies; and
2. Comply with California Government Code section 65864 et seq. and San Diego Municipal Code Section 105.0101 et seq.

POLICY:

- A. It shall be the policy of the City Council that as part of the land use decision process, the City Council shall make an initial determination on whether a development agreement is warranted for the proposed development. The City Council shall have and consider the Planning Commission's recommendation prior to taking action on an initial determination. The City Council and Planning Commission shall consider the following criteria in making the initial determination:
 1. The impacts and benefits of the following items shall be specified and utilized by the City in determining the adequacy of considerations to The City of San Diego for the City's participation as a party to the development agreement:
 - a. Circulation Facilities:
All automobile roadways
Public Transportation
Light Rail Transportation
Alternative to the automobile (i.e., bicycle and pedestrian)
 - b. Parks
 - c. Schools
 - d. Water
 - e. Police protection
 - f. Fire protection
 - g. Waste disposal:
Trash

Sewage
Hazardous waste
Others

- h. Air Quality
 - i. Community libraries
 - j. Provision of low-income and affordable housing as defined by the Housing Commission
2. The agreement shall provide for significant benefits to the City of San Diego or one or more of its communities or other public agencies which could not reasonably be derived or provided except through the development agreement.
3. For all work to be done in conjunction with the project, all developers must comply with:
- a. The City's Equal Opportunity Program including the minority and women business enterprise goals and the employment goals for women and minorities. A special plan shall be submitted concurrently with a development agreement detailing how these programs and policies shall be implemented.
 - b. The City's Balanced Community Policy No. 600-19, and the Open Housing Policy No. 600-20, and the goal contained therein to promote equal housing opportunity.
- B. Pending development agreement applications for developments which have received their required land use approvals prior to the effective date of this policy are exempted from the initial determination process. However, they must comply with the provisions of Section C of this policy. No development agreement shall be authorized for approval inconsistent with the pending Growth Management Element which has been placed on the ballot by the Council. If the City Council had, prior to the approval of the Growth Management Element, however, directed the preparation of a development agreement and specified the basic terms of the agreement subject only to its final drafting, the City could approve such an agreement.
- C. It shall further be the policy of the City Council that development agreement applications will be accepted after a favorable initial determination. Development agreements may be entered into by The City of San Diego only if a property owner's application for a development agreement includes and/or provides for the following:
- 1. The development agreement shall not preclude the inclusion of and changes to facility benefit assessments, facility financing plans, development impact fees or other related fees adopted on a community or City-wide basis where such inclusion or change is caused by inflation, later more accurate cost estimation, later commonly accepted higher standards of construction or to address community facility deficiencies arising from and attributing to unforeseen circumstances in the development of the project(s) covered by such agreement.
 - 2. A construction schedule based on public facilities and services available through a phasing and timing program establishing thresholds based on the issuance of building permits or other City Council approved thresholds, shall be provided. This schedule shall indicate the minimum development necessary to assure the applicant reasonable cost recovery for expenditures.

3. In developing standards, development agreements shall be limited in terms of what they actually vest to strictly comply with Municipal Code section 105.0106 (permitted use of land, density, design, improvement and construction standards and specifications). The right to regulate the rate and amount of growth shall not be abrogated by the City, and the development agreement should not vest such control with the developer nor limit the City's ability to regulate growth as required; provided, however, that to the extent permitted by law and to the extent that the development agreement provides for extraordinary and significant benefits to the City, the development agreement may in accordance with existing policies and regulations provide for limited phasing and timing with respect to the issuance of building permits with said issuance to be conditioned upon and in direct relationship to the construction of the extraordinary and significant benefits to be provided.
4. To ensure that provisions relating to moratoria, building permit allocations, timing and sequencing and the adequacy of public facilities can be changed to reflect exigencies, yet continue to control projects subject to development agreements, these provisions must not be specifically included in the development agreement without a companion provision expressly stating that no vested rights to those requirements are established by the agreement, provided however, that the agreement shall reflect that in the exercise of the police power with respect to these or any other matters, the City Council shall recognize the circumstances existing at the time these agreements are authorized and that said exercise of the police power be consistent with the purpose and intent of the Development Agreement statute (Government Code 65864, et. seq.). The existing ordinances and policies on these subjects control the development of land covered by development agreements and, if not included in the agreement, rights to regulations in effect at the time the agreement is executed are not vested by the agreement.
5. Where public benefits are established through Subdivision Board Resolutions for Vesting and Non-vesting Tentative Maps, Planned District Ordinances, special permit conditions, adopted Facility Benefit Assessment Districts, Facility Financing Plans or other document of similar character, then The City of San Diego shall not enter into a development agreement unless the applicant demonstrates that additional benefits are provided to The City of San Diego not already provided by the aforementioned documents. The analysis of these additional benefits shall, among other determinations, be reviewed based on Item A.1. of this policy.
6. Every development agreement entered into from on or after the date of adoption of this policy shall provide that the owner/developer shall defend, indemnify and hold the City and its officers and agents free and harmless from any and all claims and liability which might arise from the agreement or any performance by any party under said agreement. The owners of the property subject to the development agreement shall within thirty (30) days succeeding each anniversary date of the adoption date of the agreement file an affidavit with the City Planning Department that the owners of such property are in good faith compliance with the terms of such agreement. The City Planning Department shall review such affidavit and initiate a report to the City Council within thirty (30) days of the date of receipts of such affidavit if it is determined that the applicant is not in compliance with the terms of the agreement. Failure to file such affidavit shall result in the City Council finding and determining that the owner has not complied in good faith with the conditions of the agreement and the City Council may

unilaterally terminate or modify the agreement, pursuant to Section 105.0108 of the City of San Diego Municipal Code.

HISTORY:

Adopted by Resolution R-271713 08/09/1988

Amended by Resolution R-271858 09/13/1988

Amended by Resolution R-273674 06/06/1989